No. 98-789

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1998

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Cross-Petitioner,

vs.

CHARLES B. TAYLOR,

Cross-Respondent.

On Conditional Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether this Court should grant Respondent's Conditional Cross-Petition for Certiorari on the issue of collateral estoppel when the Second Circuit did no reach this issue on appeal.

Whether the District Court properly concluded that Petitioner was not precluded from raising issues of racial discrimination which could not have been raised in the context of the disciplinary proceeding held pursuant to New York Education Law Section 3020-a.

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STATEMENT OF THE CASE

Respondent in her Conditional Cross-Petition seeks to undermine the long established rule that the doctrine of collateral estoppel will not operate to preclude a plaintiff from bringing a Civil Rights action pursuant to Section 1983 when there was no identity of issues in the prior administrative proceeding.

As detailed below, there is no reason for the Court to review the decision of the District Court which correctly applied the established rule under New York law that to apply collateral estoppel, the courts require that the issue be identical and necessarily decided in the prior proceeding, and that the party against whom preclusion is sought was accorded a full and fair opportunity to contest the issue in the prior proceeding.

FACTUAL BACKGROUND

The only facts relevant to this Conditional Cross-Petition relate to the disciplinary hearing conducted pursuant to 3020-a and the Commissioner of Education's limited review thereof.

As set forth herein, there is no cause for this Court's review of this Respondent's collateral estoppel claim which has been rejected by the District Court, Eastern District of New York, and implicitly by the Second Circuit. Respondent grossly distorts the factual pattern and the procedural history of this case in a failed effort to support her untenable conclusion that an administrative disciplinary proceeding is equivalent to a jury trial in all respects, in terms of identity of issues, the opportunity to contest the issues, and the nature of the claims raised and the relief which can be fashioned.

Summarized briefly, Respondent was charged with misconduct, conduct unbecoming a teacher, and insubordination

for allegedly using physical force on two students in violation of the corporal punishment policy of the Brentwood Union Free School District. (E-147-153).

Pursuant to the procedures of Education Law 3020-a, Petitioner was afforded a disciplinary hearing by a panel of three, convened as follows: one representative selected by the Brentwood Union Free School District; One representative selected by the Petitioner, and the third member selected upon mutual consent, as the neutral third member and chairperson of the panel.

The narrow issue which was the subject of the hearing was clearly stated as follows:

> The above named hearing panel ("panel") was convened to hear and determine whether Charles Taylor ("Respondent") a tenured teacher employed by the Brentwood Union Free School District is . . . guilty of the charges brought against him by the Board and, if so, which of the penalties mandated by the statute, . . . is warranted.

(E-154).

Two of the panel members found Petitioner guilty of charges pertaining to the Alex A. incident, but none of the panel members found Petitioner guilty of charges stemming from the earlier charges involving a student by the name of Rudy P. The Board of Education for the district affirmed the hearing panel's decision and imposed upon Petitioner a one year suspension without pay. Petitioner appealed the Board's decision the New York State Commissioner of Education. The Commissioner, by law could not conduct a de novo review, but had to limit his review to the record of the disciplinary hearing. The Commissioner upheld the district's decision and Petitioner was suspended for one year without pay.

Petitioner filed the underlying action in District Court, Eastern District of New York, alleging a violation of his First Amendment rights and Equal Protection rights and a violation of his constitutional rights pursuant to 42 U.S.C. § 1983. Petitioner did not allege racial discrimination and First Amendment claims until filing this action. Likewise, he was not privy to discovery which showed similarly situated white teachers were treated more favorably than him until this action was filed.

REASONS FOR DENYING THE WRIT

The Cross-Petitioner's claim that the court below abused its discretion in determining that the disciplinary proceeding did not raise the same issues as Petitioner's Section 1983 claim does not warrant review by this Court.

The decision below was a plainly correct application of settled law, and no conflict among the circuits has been asserted or alleged.

A. This Court should not review an issue which was not addressed by the Second Circuit.

The Cross-Petitioner acknowledges that the Second Circuit did not reach the issue of collateral estoppel. There has been no compelling reason given for this Court to decide this issue.

B. District Court properly determined that the disciplinary proceeding does have preclusive effect.

The district court cited *Allied Chemical v. Niagra Mohawk Power Co.*, 72 N.Y. 2d 271, 276, 532 N.Y.S. 2d 230, 232 (1988), *cert. den.*, 488 U.S. 1005, 109 S. Ct. 785 (1988), for the requirements of issue preclusion as being that the issues are identical and necessarily decided in the prior proceeding and

that the party against whom preclusion is sought was accorded a full and fair opportunity to contest the issues in the prior proceeding.

In denying the 12(b)(6) motion, the court below found it unnecessary to go beyond the first requirement, concluding that there was no identicality and decisiveness of issues in the prior administrative proceedings and Taylor's Section 1983 and First Amendment causes of action. (A-47-48). Taylor's petition to the commission was not a de novo review of the issues addressed in the 3020-a proceeding, but was rather limited to a review of the disciplinary panel's decision in light of the evidence and testimony adduced at the hearing. (E-171). The Commissioner expressly noted that Taylor had asserted new allegations in an attempt to augment the claims in his petition and that he submitted several exhibits which were not before the 3020-a panel, none of which could be considered in this review because Taylor was limited to the record that was before the panel. (E-171).

Instead of appealing the Commissioner's decision through the special proceeding of an Article 78 petition, Taylor filed the within federal action. (A-15-25). Citing a string of state court decisions upholding Commissioner of Education decision affirming 3020-a panel decisions, Rooney raises a speculative argument that if Taylor had initiated an Article 78 proceeding, the state court would have affirmed the Commissioner's and the panel's decision. This type of conjecture is not the least bit persuasive on the issues of identicality and decisiveness under the *Allied chemical, supra*, requirements for collateral estoppel. Conclusive effect of the 3020-a decision and the Commissioner's decision, should not automatically flow from a statement of generalities that the state courts generally uphold the findings of the 3020-a panel, especially when, as is the case here, the threshold requirements of identicality, decisiveness and opportunity to litigate are not present.

It is precisely for this reason that Rooney's reliance upon *University of Tennessee v. Elliot*, 478 U.S. 788, 106 S. Ct. 3220 (1988) is misplaced: *Elliot,* only applies to preclude relitigation of issues under Section 1983, *if* there is identity of issues and they were necessarily decided in the prior administrative proceeding. *Elliot,* at 799, 106 S. Ct. at 3226. Thus, to represent *Elliot* as a statement of a blanket rule that prior administrative proceedings are preclusive in Section 1983 cases is an oversimplification of the holding, ignoring the *if,* requirement of identicalness and decisiveness of issues. (Emphasis added). The record clearly indicates that the 3020-a panel's decision and the Commissioner of Education's ruling were much narrower in scope than the issues Taylor has raised under the First Amendment and the Fourteenth Amendment in a Section 1983 proceeding.

Likewise, Rooney's reliance upon decision in this Circuit for the application of collateral estoppel in this case is misplaced. In *Ryan v. New York Telephone Co.*, 62 N.Y. 2d 494, 478 N.Y.S. 2d 823 (1984), the court imposed the burden on the proponent of collateral estoppel to demonstrate identity and decisiveness of issues. 62 N.Y. at 501-502, 478 N.Y.S. 2d at 827. Rooney has failed to meet this burden. Her failed attempt at doing so comes only through a mischaracterization of the Commissioner of Education's decision, indicating that the Commissioner held that Taylor was not treated differently than any other teacher: To the contrary, the Commissioner only reviewed Taylor's claim that the panel did not consider discrepancies in the Board's treatment of *another* teacher, not any other teacher. (Emphasis added) (E-172). Likewise, the reliance upon the 3020-a panel's finding of guilt as to one of the two charges, does not preclude Taylor raising constitutional issues of retaliation and selective application of the District's corporal punishment policy, since they were not considered by the 3020-a panel, nor the Commissioner of Education.

Kirkland v. City of Peekskill, 828 F.2d 104 (2d. Cir. 1987) is also distinguishable because that case dealt with the unique statutory powers and authority of the New York Sate Division of Human Rights to investigate complaints of discrimination. *Kirkland* also dealt with a situation where the court determined that the plaintiff had a full and fair opportunity to litigate his claims before the Human Rights Division and had also been afforded the opportunity to have his claim reviewed by state court. Those factors are not present in Taylor's case.

Lastly, independent of the failure to meet the *Allied Chemical* requirements, Rooney's argument of issue preclusion must fail on the issue of damages. Under New York law, a prior adjudication will not bar later claims if the initial forum did not have the power to award the full relief sought in the later litigation. *Davidson v. Capuano*, 792 F.2d 275, 278 (2d. Cir. 1986). Specifically in *Davidson*, the court held that a prior Article 78 proceeding does not preclude a subsequent Section 1983 action for damages, since damages for civil rights violations are not available in an Article 78 proceeding. *Id.* p. 282. The court reasoned that the primary relief sought in an Article 78 special proceeding is the review and reversal of a governmental action: Whereas the primary relief in a Section 1983 civil rights case is compensatory damages. The state court cannot automatically grant the compensatory damages in an Article 78 proceeding. Thus, in this case Taylor, cannot be denied the opportunity to seek these damages, which are unavailable under the 3020-a disciplinary proceeding, the Commissioner's review thereof, and an Article 78 proceeding.

Accordingly, for all of the reasons set forth herein, Rooney has failed to demonstrate the applicability of the doctrine of collateral estoppel with respect to the petitioner's constitutional claims. It was not reversible error for the district court to hear these claims.

CONCLUSION

For the reasons given above, the Cross-Petition must be denied.

Respectfully submitted,

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